IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.869 OF 2003

Sou. Leelabai Shantaram Shilimkar .. Appellant
(Orig.Plaintiff)

Versus

Shri Chandrakant Ramchandra Shelar..Respondent
(Orig.Defendant)

Mr. R.G. Jagtap for the Appellant
None for Respondent

CORAM : S.R.SATHE,J.
DATED : 12/07/2007

ORAL JUDGEMENT :-

1. The Appellant-original Plaintiff in Regular Civil Suit No.88 of 1992 has preferred this appeal against the Judgement and order passed by the court of Second Additional District Judge, Raigad whereby the order dismissing the Plaintiff's suit was partly set aside and the defendant was restrained from obstructing the Plaintiff's peaceful possession of the suit land described in para-1 of the plaint. For the sake of convenience the parties shall be referred to as 'Plaintiff' and 'defendant'.

2. The brief facts giving rise to this appeal are as under :-

The suit properties which are consisting of agricultural land and house property situated at village Rupavali, Taluka Mahad were owned by

Plaintiff's father Laxman Ramji Shelar. According to Plaintiff, there was some quarrel between she and her father Laxman Ramji Shelar. The defendant who is distant relative of Laxman took disadvantage of the said situation and gave false assurance to Laxman that he would maintain Laxman and therefore, got executed a will dated 14/08/1991 in respect of the suit property described in para-1(a) of the plaint. Similarly, he also got the sale deed of the house property executed in his favour on the same day. However, subsequently, defendant neglected Laxman and his wife and so their daughter i.e. Plaintiff in fact took care of them. When Laxman realized the said fact, he issued notice dated 16/10/1991 and cancelled the will dated 14/08/1991. Thus, Plaintiff became the owner of the landed property being only legal heir of Laxman. According to her, Laxman had in fact subsequently executed his last will dated 11/12/1991 and bequeathed the suit property to him.

3. According to Plaintiff, the Sale Deed which defendant got executed from Plaintiff in respect of the house property was without consideration and the same was got executed by fraud. She, therefore, alleged that the Sale Deed is null and void.

4. However, as the defendant was intending to obstruct the Plaintiff's possession and cultivation of the suit lands on the basis of the earlier will, Plaintiff filed suit for declaration and injunction against the defendant.

5. The defendant filed his Written Statement at Exh-11 and opposed the suit claim. The defendant contended that Plaintiff was not taking care of Laxman and as such, he was looked after by him. He also denied that the will executed in his favour was cancelled by Laxman and that Laxman had executed another will in favour of Plaintiff on 11/12/1991. He contended that the Sale Deed is legal and valid and as per the same, he is in possession of the house property. He, therefore, contended that Plaintiff's suit be dismissed.

6. On these pleadings, the learned Trial Judge framed issues. After considering the oral and documentary evidence adduced by both the parties, the learned Trial Judge came to the conclusion that Plaintiff has failed to prove that the will executed in favour of the defendant was revoked and subsequently,

new Will was executed in Plaintiff's favour. He also held that Plaintiff has failed to prove that the Sale Deed dated 14/08/1991 was without consideration. Naturally, he dismissed the Plaintiff's suit.

7. The above mentioned order was challenged by the original Plaintiff in Civil Appeal No.392 of 1996. After hearing the arguments of both the learned Advocates the learned Additional District Judge came to the conclusion that Plaintiff has proved that the earlier will executed by Laxman in favour of defendant was revoked by him by issuing notice and he had in fact executed subsequent will dated 11/12/1991 and thus, Plaintiff is the owner of the agricultural land and defendant has no right, title and interest in the same and he is not entitled to obstruct the Plaintiff. He, however, held that Plaintiff has failed to prove that the Sale Deed executed in favour of defendant was without consideration. He, therefore, negatived the Plaintiff's claim in respect of the Sale Deed and decreed the suit partly.

8. Being aggrieved by the above mentioned order regarding Sale Deed the Plaintiff has filed the present second appeal. In this appeal before me Shri Jagtap, learned Advocate for the Appellant-original Plaintiff

argued before me that the learned Trial Judge has not properly appreciated the evidence on record and has wrongly held that Plaintiff has failed to prove that the Sale Deed was without consideration. He, therefore, submitted that substantial question of law involved in this appeal is whether the Sale Deed executed by Laxman in favour of defendant is legal and valid.

9. Though, the defendant was served he remained absent.

10. From the perusal of the judgement of the First Appellate Court it is very clear that admittedly Laxman has executed Sale Deed in respect of the house property in favour of defendant on 14/08/1991 and it is a registered Sale Deed. The Plaintiff has in fact stated in her deposition that the contents of the said Sale Deed are true and correct. In the Sale Deed, it is specifically mentioned that consideration of the said Sale Deed Rs. 9000/- was paid by the defendant to Plaintiff. So, under such circumstances, the First Appellate Court was justified in holding that it can not be held that the Sale Deed was without consideration. Moreover, it has also come on record that during the life time of Laxman he never made a

grievance about the said Sale Deed. He had never stated that the Sale Deed was sham and bogus and was without consideration. It is worth to note that though Laxman had cancelled and revoked the earlier Will in favour of defendant, he did not take any action so far as Sale Deed is concerned. On the contrary, it does appear that on the basis of the Sale Deed, defendant was put in possession of the house property. Even then, Laxman did not raise any objection. So, under such circumstances, the First Appellate Court rightly observed that there is nothing on record to show that the Sale Deed was without consideration. Thus, the finding that the Sale Deed was not without consideration is the finding of fact. The same is based on the evidence on record. By no stretch of imagination, it can be said that the said finding is perverse. Hence, it is very clear that there is in fact no substantial question of law involved in the matter. There is no substance in the arguments advanced by the learned Advocate for the Appellant in this behalf. Order passed by the learned First Appellate Court is legal and correct. Hence, I pass the following order :-

O R D E R

Appeal is dismissed in limine.

Under the circumstances of the case, parties to bear their own costs of this appeal.

(S.R. SATHE,J.)